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August 8, 2001

EX PARTE – Via Electronic Filing

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, DC 20554

Re: CC Docket No. 94-129

Dear Ms. Salas:

On August 2, 2001, Jim Veilleux, President, VoiceLog LLC, and John Nakahata and Fred Campbell, Jr. of Harris, Wiltshire, & Grannis, representing VoiceLog, met with Katherine Schroder and Prelesta Hollingsworth of the Common Carrier Bureau. Mr. Veilleux attended the meeting via telephone. We discussed the results of VoiceLog's survey regarding the "drop off" rule for third party verification. Copies of the survey results were provided to Ms. Schroder and Mr. Hollingsworth at the meeting. A copy of the survey results is attached.

We also stated that we believe the "drop off" rule is an unconstitutional abridgement of carriers' and marketers' First Amendment rights of free speech. We noted that the First Amendment requires a reasonable fit between the means and ends of the regulatory scheme, and that no such reasonable fit exists with respect to the "drop-off" rule as written. The problem with the "drop off" rule is that it prohibits all carrier or marketer speech during the third party verification, disregarding far less restrictive means of accomplishing the desired end. VoiceLog believes that the rule proposed in its petition for reconsideration is, unlike the "drop-off" rule, more consistent with the First Amendment. The proposed rule is one that respects the First Amendment interests of the carrier and the consumer in exchanging truthful, non-misleading information, but which still protects the consumer against misleading information or unsolicited information intended to mold or direct the consumer's answers to verification questions.

In accordance with FCC rules, a copy of this letter and attachments has been filed electronically in the above captioned docket. Please contact John Nakahata, (202) 730-1320, if you have any questions.

Sincerely,

/s/

John T. Nakahata

JTN/krs

c: Katherine Schroeder, Chief, Accounting Policy Division, Common Carrier Bureau
Prelesta Hollingsworth, Attorney, Accounting Policy Division, Common Carrier Bureau

IMPACT OF "REPRESENTATIVE DROP OFF" RULE
A Survey By VoiceLog LLC

EXECUTIVE SUMMARY

In response to FCC staff requests for more detailed information about the cost of compliance with the "representative drop off" rule, VoiceLog LLC ("VoiceLog") conducted an Internet-based survey of clients and prospects. Although the results may not be statistically representative, they are probably a good indication of the attitudes and behaviors of a large segment of the competitive telecommunications market. Some of the most striking results of the survey are:

- More than half of respondents claim they are not in compliance with the "representative drop off" rule;
- Almost one-third of respondents say they do not have the technology to comply with the rule;
- Over 40% of respondents say they cannot tell systematically whether the representative has dropped off or not;
- According to many respondents there are significant costs associated with compliance with the rule:
    - Initial capital costs of \$10,000 to \$100,000 or more, according to more than one third of respondents who would have to upgrade;
    - Monthly incremental costs of \$1000 to \$5000 per month or more, according to 50% of respondents answering that question;
    - Operational issues, especially in knowing quickly whether the verification was completed.
- Over half of respondents cite a lack of capital as a barrier to compliance with the rule, giving significance to the increased costs associated with the rule;
- A significant fraction (16%) of respondents say they are unable to upgrade their technology to comply with the rule.

In short, between 16% and 40% of respondents will have significant difficulties with compliance with the representative drop off rule, ranging from complete inability to comply and potential abandonment of the market to significantly higher operational costs and an inability to reliably monitor their own compliance with the rule.

BACKGROUND

At a recent series of meetings with FCC staff members and others, VoiceLog was asked for specific dollar costs associated with a telemarketing center's compliance with the "representative drop off" rule. In order to provide that information, VoiceLog conducted an Internet-based survey of members of the telecommunications industry. These results summarize the information gathered by that survey.

METHODOLOGY

VoiceLog developed a survey (attached) inquiring whether a telecommunications carrier was in compliance with the "representative drop off" rule, the cost of that compliance, and related issues. The survey was sent by email to VoiceLog's general contact list, which includes both clients and prospects. Addressees were asked to complete the survey only if they sold telecommunications services via telemarketing and used third party verification.

Survey results were gathered using Perseus SurveySolutions software. The survey was attached to the original email and posted to VoiceLog's website. Seventy (70) completed questionnaires were returned. Duplicate responses were deleted, leaving 58 unique responses. The responses are "blind" in that they do not specifically identify the responding entity.

This survey cannot be considered a statistically valid profile of the telecommunications industry. The VoiceLog contact file, which is the sampling universe for the survey, was developed for sales prospecting and client communication and not for survey work. However, VoiceLog estimates that there are between 300-400 carriers selling telecommunications services via telemarketing and using third party verification, so the results from 58 respondents may be considered at least an important measure of the range of responses, and proportionately significant responses can be considered at least a reasonable measure of the potential direction of actual market opinions and attitudes.

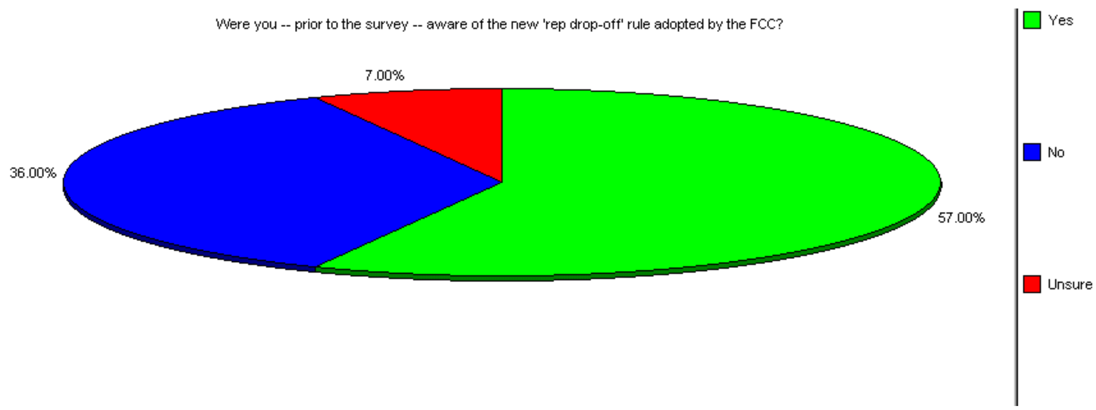
Although the sample was not statistically random, the results do represent a broad spectrum of the industry. Although 40% of the respondents had 50 or less employees, more than 10% of respondents had over 1000 employees. Similarly, 58% of respondents had $10 million or less in revenue while 14% had more than $100 million in annual revenue. The vast majority of respondents reported selling residential and business services, and over half sell local and Internet broadband service.

Note that the number of respondents answering a particular question varies and is indicated in parentheses (e.g. "(N=38)"). Percentages cited are a percent of those answering a specific question unless noted otherwise.

RESULTS

Awareness and Compliance with The Rule

Although most respondents were familiar with the rule, a substantial number (43%) said that they were either unaware of the rule or unsure whether they were aware of the rule. This may explain why over half of the respondents said that they were not in compliance with the rule.



Q.2 Are you currently in compliance with the FCC drop-off rule? (Do all your reps drop off the line once the TPV session has begun?)

Choice	Count	Percent
Yes	19	32.8%
No	30	51.7%
Unsure	9	15.5%

Ability to Comply With The Rule

We asked two questions related to the ability to comply with the rule. First, whether the carrier had the ability for their sales representatives to drop off the line after the connection with the third party verifier and second, assuming that they had that ability, whether they could systemically tell whether or not the representative had dropped off.

The ability to tell if the representative has dropped off is important, because otherwise a carrier could be liable for violating FCC rules without any means of knowing whether a violation has occurred. Thus, even if a carrier requires that the sales representative drop off, if the representative can stay on the line without the carrier knowing, there is no assurance that the rule will be followed, even if the carrier makes that its policy. (Telemarketers can and do monitor their representatives but such monitoring practices are basically small samples, usually of 5% or less of all calls, and drop off would have to be monitored in person, rather than remotely.)

Almost half of respondents (N=58) said they either did not have the ability for the representative to drop off or were unsure if they did. A large percentage of respondents (N=44) said they could not systematically tell if the representative had actually dropped off the line. Even among those who said they had the technical capability to allow the representative to drop off the line, 22% of those respondents said they could not tell systematically if the representative had dropped off the line.

Q.3 Do you currently have the technology required for your sales reps to drop off the line once the TPV has begun? (You have the technology required if you are capable of doing a transfer of the customer to the TPV, or you can set up a three-way call and then have your rep drop off the line without disconnecting the customer from the TPV.)

Choice	Count	Percent
Yes	30	51.7%
No	19	32.8%
Unsure	9	15.5%

Q.4 Do you have the ability to systematically monitor whether your sales reps have dropped off the line during the TPV or not? (In other words, your reps may be able to drop off the line, but you may or may not be able to tell whether they are still on the line during the three-way call.)

Choice	Count	Percent
Yes	18	40.9%
No	18	40.9%
Unsure	8	18.2%

Costs of Compliance

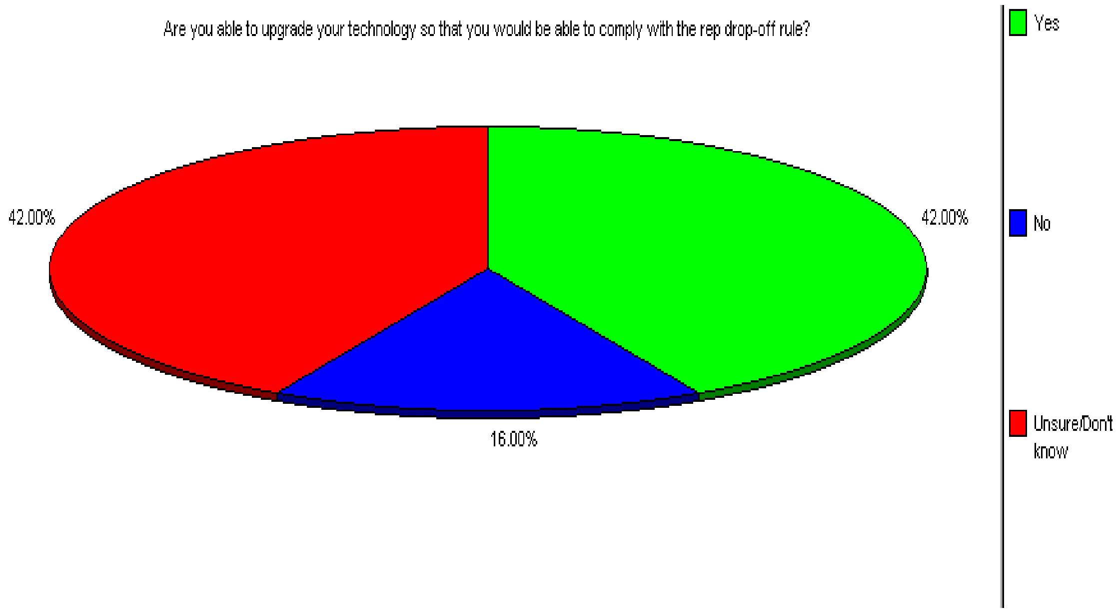
Although half of respondents reported the ability to support having the sales representative drop off the line, compliance with the sales drop off rule is not cost-free. We asked respondents who said they could support dropping off the line what issues might be involved in compliance with the rule and what the costs were.

Question 5 below shows the results from “pre-coded” responses (that is, the respondent was given choices to select among.) Note that responses here will add to more than 100% (N=39). In addition, we asked these respondents for the monthly incremental cost of complying with the representative drop-off (N=30). Answers varied widely, from $0 to $50,000. At least 15 (50%) respondents reported a monthly incremental cost of compliance at $1000 or more, and at least 7 respondents (23.3%) reported an increased cost of $5000 per month.

Q.5 Assuming that your rep can drop off the line using the technology that you have, please indicate whether any of the following potential problems may affect you as a result of the rep dropping off the line:

Choice	Count	Percentage Answered
Tying up a second circuit while the TPV is being completed	22	56.4%
Inability to know when the TPV call is complete	34	87.2%
Inability to know the results of the TPV (whether the sale is good or bad)	36	92.3%
Higher telecommunications costs to get a carrier that can support transfer	15	38.5%

We asked respondents about their ability to upgrade their technology to comply with the drop off rule (N=50%). Only 16% said that they could not upgrade their technology to do so; however, some of these were respondents who already said they could comply, and over 40% said they were unsure if they could do the upgrade. Fully 66% of those who said they either could not support the rule currently or were unsure said they could not upgrade their technology to support the rule (these results are not shown here).



We then asked what the cost of the upgrade would be (N=33). Again, responses varied widely, from $0 (these respondents were already in compliance) to $250,000. At least 12 respondents reported the cost at$10,000 or more, eight of those reported costs of $50,000 or more and six reported costs of $100,000 or more. One respondent also volunteered that along with the $50,000 upfront cost, compliance would add another $50 per month per line.

<u>Barriers to Compliance</u>

Last, we asked respondents what prevents them from upgrading their technology to comply with the drop off rule. Lack of capital was the largest barrier to respondents' ability to comply with the rules, followed by lack of technological information. There were also a large number of "other" responses, most of which centered on the issue of knowing whether the customer had completed the verification and the customer service issues associated with that. An excerpt of those responses is included below in 9.a.

Q.9 What prevents you from upgrading your technology to comply with the rep drop-off rule?

Choice	Count	Percentage Answered
Lack of capital	19	51.4%
Central office won't support	1	2.7%
Technology unavailable	3	8.1%
Lack of technological information	17	45.9%
Other (if other, specify below in 9a)	15	40.5%

Q.9a Other barriers to 'rep drop off'

• Cannot complete orders until next day. This is annoying to customers who would like to switch immediately. Also, if the verification was not complete we need to get in touch with the customer to let them know they are not with the carrier of their choice...
• Currently a manual phone system with 3 way conferencing capability. We would need a new phone system with unsupervised transfer capability.
• Due to the ethnic nature of our customer base, our customers require bi-lingual assistance from the rep. Although TPV may be "in language", some translations are not direct and therefore require additional explanation by the rep. This would not be possible...
• Need to get confirmation number after TPV
• Poor customer care
• Rep required to stay in able to transition if the TPV fails. The TPV is logged as failed but we get the call right back.
• We never know if TPV was completed for LATA and/or Inter PIC...
• We utilize 3rd Party Verification before placing the order. If we drop-off the call, how would we know that it was successful and how would the Customer contact us to complete the order? (We use this as a front-end application prior to the completion...)

REP DROP OFF RULE SURVEY
Survey Instrument

This confidential questionnaire was developed to determine if your company is complying with the "rep drop-off" rule and to find out the costs of compliance with that rule. The results will be used to help the FCC understand the impact of this rule on competitive carriers.

Background: The FCC's Third Report and Order requires that the sales representative drop off the call once the third party verification session has begun. The idea is that the sales rep can set up a three-way call with the third party verification provider and then drop off, leaving the customer and the TPV provider connected.

The purpose of this survey is to attempt to document the potential costs of complying with this rule as well as the level of compliance that currently exists.

Although VoiceLog will share the results of the survey with the FCC, no individual survey results will be released outside of VoiceLog, and the survey is designed so that we will not know who the individual respondents are. You may therefore answer the survey in complete candor without concern for any legal repercussions. It is important, however, that you provide honest and complete answers to the questions, so that we can relay credible information to the FCC.

You should respond to this survey if you currently do inbound or outbound telemarketing to either residential or business customers, and use third party verification as your verification method.

Q.1. Were you -- prior to the survey -- aware of the new "rep drop-off" rule adopted by the FCC?

- ❍ Yes
- ❍ No
- ❍ Unsure

Q. 2. Are you currently in compliance with the FCC drop-off rule? (Do all your reps drop off the line once the TPV session has begun?)

- ❍ Yes
- ❍ No
- ❍ Unsure

Q.3. Do you currently have the technology required for your sales reps to drop off the line once the TPV has begun? (You have the technology required if you are capable of doing a transfer of the customer to the TPV, or you can set up a three-way call and then have your rep drop off the line without disconnecting the customer from the TPV.)

- ❍ Yes [Go to question 4]
- ❍ No [Go to question 7]
- ❍ Unsure [Go to question 4]

Q.4. Do you have the ability to systematically monitor whether your sales reps have dropped off the line during the TPV or not? (In other words, your reps may be able to drop off the line, but you may or may not be able to tell whether they are still on the line during the three-way call.)

- ❍ Yes
- ❍ No
- ❍ Unsure

Q.5. Assuming that your rep can drop off the line using the technology that you have, please indicate whether any of the following potential problems may affect you as a result of the rep dropping off the line:

- ❑ Tying up a second circuit while the TPV is being completed
- ❑ Inability to know when the TPV call is complete
- ❑ Inability to know the results of the TPV (whether the sale is good or bad)
- ❑ Higher telecommunications costs to get a carrier that can support transfer

Q.6. To the extent that you are able, please quantify the average monthly additional cost of complying with the rep drop-off rule. For the purposes of this survey, a rough estimate is better than no answer.

Monthly cost of "rep drop off":

____

Q.7. Are you able to upgrade your technology so that you would be able to comply with the rep drop-off rule?

- ❍ Yes
- ❍ No
- ❍ Unsure/Don't know

Q.8. What is your best estimate of the cost required to upgrade your technology to comply with the rep drop-off rule?

Upgrade cost for rep drop-off:

____

Q.9. What prevents you from upgrading your technology to comply with the rep drop-off rule?

- ❑ Lack of capital
- ❑ Central office won't support
- ❑ Technology unavailable

- ❑ Lack of technological information
- ❑ Other (if other, specify below in 9a)

Q.9a. Other barriers to "rep drop off":

____

Q.10. How many employees do you have?
- ❍ 1 - 10
- ❍ 11 - 20
- ❍ 21 - 50
- ❍ 51 - 100
- ❍ 101 - 250
- ❍ 251 - 500
- ❍ 501 - 1000
- ❍ 1001+

Q.11. What is your annual revenue?
- ❍ Less than $1 million
- ❍ $1 million to $5 million
- ❍ $5 million to $10 million
- ❍ $10 million to $25 million
- ❍ $25 million to $100 million
- ❍ More than $100 million

Q.12. What services/markets do you sell? (Choose all that apply)
- ❑ Residential
- ❑ Business
- ❑ InterLATA
- ❑ IntraLATA
- ❑ Local
- ❑ International
- ❑ Broadband internet access

Thank you for your help!